

REMARKS

Claims 1-20 are currently pending in the application. Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Madoff et al. (U.S. Patent No. 7,162,448, referred to herein as “Madoff”) in view of Hauser et al. (U.S. Patent No. 6,061,789, referred to herein as “Hauser”) further in view of Lutnick et al. (U.S. Patent No. 6,850,907, referred to herein as “Lutnick”).

Although the Examiner has withdrawn the prior § 101 rejections, Applicants may submit preliminary amendments in consideration of and promptly after the decision in *Bilski v. Doll*, No. 08-964 (Supreme Court of the United States), expected May 17, 2010 or soon thereafter that is expected to better inform all applicants and patentees of the proper claiming of computer-related inventions.

Applicants respectfully traverse the §103 rejections, but amend Claims 1, 7, 10, 11, 17 and 20 to more clearly claim that that a bid or offer must be better than a “threshold” price improvement to initiate the secondary auction during which the bidder or offeror may make further bids or offers, that is, interactively.

As explained in Response (C), submitted July 23, 2009, Madoff discloses extension of a primary auction in the national market by essentially making a time-limited order within the same underlying auction with an offeror-specified time period during which respondents may or may not match the offeror’s conditions, without any knowledge of the bidding for the offer. Madoff teaches away from the interactive secondary auction disclosed and claimed in the instant application in which, during the market-established secondary auction period, participants respond to proposed price improvements greater than a market-established threshold – and in which the offeror may change a bid.

Again, Madoff does not merely not suggest combining a feature of anonymity during a secondary auction period, but it teaches away from such an interactive secondary auction

altogether. Madoff exposes a participant's time-limited order in the primary auction, and through that exposure defines participation in the primary auction. Hiding that exposure defeats the particular approach of Madoff. Neither anonymity or non-anonymity in auctions are new; the use of one or the other, however, may be parts of distinct processes that teach in different directions. Thus, Madoff itself teaches away from anonymity in the interactive secondary auction, because it teaches how to participate in the primary auction by a controlled exposure by the participant and thus teaches away from the application of Hausser as maintained by the Examiner.

Nor can Lutnick fill a gap because Madoff teaches away from the interactive secondary auction disclosed and claimed by Applicants. Lutnick discloses the use of the market price as a determination of whether there exists price improvement warranting a change in "active" status for allocation of commissions. Lutnick does not teach an interactive secondary auction in which activity greater than the preset price improvement threshold initiates an auction open to all participants anonymously for a preset period of time; in fact, the reason for determining price improvement and the objects of Lutnick is to expose the participants for allocation of trades and commissions. That is, Lutnick itself teaches away from a separate anonymous auction of a preset duration, so that it would itself be inconsistent with the application of Hausser.

Madoff, Hausser and Lutnick address aspects of and particular directions in trading in the national marketplace "primary" auction. Madoff and Lutnick teach away from an anonymous, interactive, time-defined secondary auction initiated by a threshold price improvement, and thus Applicants' invention cannot be an obvious in view of any combination of these references.

Upon stabilizing the claims in light of the expected decision in Bilski, Applicants offer to submit evidence that their invention, embodied in a filing with the United States Securities and Exchange Commission at the time of the provisional application based in large part on that filing, met a long felt need and has achieved commercial success and has been copied by others.

Applicants repeat its specific arguments as to each claim as set forth in Response (C), with the further consideration that the amendments herein make clear that the secondary auction allows all participants to bid or offer anonymously during the pre-defined auction period initiated by one participant bettering a pre-set price improvement threshold.

Thus request that the Examiner withdraw the rejections and grant favorable consideration and allowance.

Upon review of this paper, the Examiner is invited to contact the undersigned at 617-345-3263 with any questions or comments.

Respectfully submitted,
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Applicants

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